

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against )	Case No. AC-2000-21
)	
)	OAH No. L2000050041
KALAJIAN, THOMAS V. )	
23232 PERALTA DRIVE, STE 103 )	
LAGUNA HILLS, CA 92653 )	
)	
)	
_____ )	

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Board of Accountancy as its Decision in the above-entitled matter.

This Decision shall become effective on May 2, 2001

IT IS SO ORDERED April 2, 2001

  
BOARD PRESIDENT

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THOMAS V. KALAJIAN  
15707 Rockfield, Suite 101  
Irvine, CA 92718

CPA Certificate No. 22037,

Respondent.

OAH NO. L-2000050041

CASE NO. AC-2000-21

**PROPOSED DECISION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, at Laguna Niguel, California on August 15, and 16, 2000, and January 30, 31, and February 1, and 2, 2001.

Deputy Attorney General Linda K. Schneider represented complainant.

Respondent, Thomas Kalajian, personally appeared and was represented by David Ostrove, Esq.

Oral and documentary evidence was received and the matter was submitted.

**FACTUAL FINDINGS**

The ALJ makes the following Factual Findings:

1. Carol B. Sigmann filed the Accusation in her official capacity as the Executive Officer of the California State Board of Accountancy ("the board").
2. On September 26, 1975, the board issued Certified Public Accountant Certificate number 22037, to respondent, Thomas V. Kalajian.

Respondent's certificate expired, and was invalid during the following time periods: April 1, 1989 through May 31, 1989; April 1, 1991 through June 24, 1991; April 1, 1995 through June 13, 1995; April 1, 1997 through June 13, 1997; and,

April 1, 1999 through October 1, 1999. Except for these time period respondent's license was in full force and effect.

## INTRODUCTION

This case hinges on credibility findings. If respondent and his wife are believed then clear and convincing evidence does not exist to support the most serious of the allegations against respondent, embezzlement. Alternatively, if Mr. Harvey Brown and Ms. Joan Brown are believed then there is clear and convincing evidence to support the allegations of the accusation. Because, as set forth below, the ALJ concludes that Mr. and Ms. Brown are credible and respondent and his wife are not, the allegations of the accusation are proven.

## CREDIBILITY OF THE WITNESSES

3. In the present instance respondent argues that Harvey Brown is lying because he does not want his wife, Joan to discover how inept he was at handling the company's finances, such as bill paying and tax withholding. If respondent's theory is sound, then there is no similar reason for Joan Brown to misrepresent the facts. A comparison of the Browns' testimony reveals that they pretty much had the same expectations concerning the services being rendered by respondent and the amounts they were paying for the services. For instance, both the Browns testified as follows concerning the March 5, 1998 budget meeting: Respondent and his wife appeared at the meeting with Mr. and Ms. Brown. Respondent brought his laptop computer with the 1997 "actuals" already loaded. Respondent and his wife did not bring a "hard-copy" of the 1997 general ledger. The group looked at the computer screen as they discussed the 1997 "actuals" and the 1998 projections.

Respondent and his wife, on the other hand, testified that they brought a "hard-copy" of the complete 1997 General Ledger to the meeting and gave Harvey Brown a complete copy. (See Exhibit 52.) According to respondent and his wife, the group discussed the general ledger items, respondent input the information into the computer and then printed exhibit 3, entitled "Marguerite Physical Therapy Clinic, Inc. 1998 Financial Plan." According to respondent and his wife, the categories and information used to construct the 1998 Financial Plan came from the 1997 General Ledger (Exhibit 52.)

Mr. and Mrs. Brown testified that on March 31, 1998, Ms. Brown received a "check detail", Exhibit 33 from respondent. Respondent represented the documents as being copies of the "General Ledger". Later, the Browns were forced to get a court order to compel respondent to release company documents to them. According to the Browns, pursuant to the court order, in May of 1998, they received another "check detail" (Exhibit 34) and a copy of the "General Ledger" for

Marguerite Physical Therapy Clinic, Inc.(Exhibit 37.) It was based on these documents that the Browns discovered that respondent and his wife had embezzled approximately \$97,503 from Marguerite Physical Therapy Clinic, Inc. during 1997.

Respondent and his wife testified that they did not prepare Exhibits 33, 34 and 37. To corroborate their testimony respondent produced copies of two pages of the 292 page General Ledger (Exhibit J) that respondent and his wife swore was physically present at the March 5, 1998 financial planning meeting with the Browns. The complete copy of the General Ledger was eventually entered into evidence by complainant as Exhibit 52. Respondent and his wife swore that they only prepared General Ledgers using an "Axcent" program. Exhibits 33, 34 and 37 were prepared using Quickbooks, therefore, those exhibits were not prepared by respondent or his wife; rather, they must have been created by the Browns to falsely implicate respondent and his wife in the alleged embezzlement of funds from Marguerite Physical Therapy, Inc.

A review of the physical evidence belies the claims being made by respondent and his wife. A comparison of Exhibits 52, the "Axcent" General Ledger respondent and his wife swear they used at the March 5, 1998 meeting, Exhibit 37, the "Quickbooks" General Ledger the Browns claim to have received from respondent pursuant to the May 1998 court order, and Exhibit 3, the 1998 Financial Plan that respondent, respondent's wife, and the Browns all agree was compiled and printed by respondent during the March 5, 1998 financial planning meeting reveal that respondent and his wife are not being truthful about what occurred. The titles of the categories for revenues and expenses on the 1998 Financial Plan clearly and convincingly establish that Exhibit 37, the General Ledger prepared on Quickbooks, was used to create the categories on Exhibit 3, the 1998 Financial Plan created by respondent on or before March 5, 1998. Exhibit 52, the "Axcent" General Ledger was not used to create Exhibit 3; certain of the category titles differ significantly. Examples are as follows:

#### ACCOUNT CATEGORIES

<u>Exhibit 3</u>	<u>Exhibit 37</u>	<u>Exhibit 52</u>
"Patient Collections all source"	"Patient Collections all source"	"Income from patient collections"
"Income from patient svc chgs"	"Income from patient svc chgs"	No Such Category
"Depreciation of prod equipment"	"Depreciation of prod equipment"	"Depreciation of technical equipment"

“Health Insurance for employees”	“Health insurance for employees”	“Health insurance for technical staff”
“Personnel hiring/recruiting and exp”	“Personnel hiring/recruiting exp”	“Personnel hiring recruiting”
“Accounting and financial stmts”	“Accounting and financial stmts”	“Accounting, tax and management services”

Clearly, Exhibit 37, the “Quickbooks” General Ledger, was used by respondent to create Exhibit 3, the 1998 Financial Plan produced by respondent at the March 5, 1998 financial planning meeting. Exhibit 52, the “Axcent” General Ledger, was not used by respondent at the March 5, 1998 meeting. Respondent and his wife lied about having Exhibit 52 at the meeting and using it to create Exhibit 3.

4. Respondent’s demeanor, while testifying about the incidents, also undermines his credibility. Respondent frequently “could not recall” key matters that would serve to undermine his story. At the same time, he had vivid recollections of matters that supported his defense.

5. Respondent and his wife’s false testimony concerning key matters causes the ALJ to discount their testimony in its entirety. With this credibility determination made, the following Factual Findings naturally flow.

#### FINDINGS CONCERNING THE ALLEGATIONS OF THE ACCUSATION

6. In June, 1995, respondent was retained by Joan and Harvey Brown to perform bookkeeping and tax services for their business; Marguerite Physical Therapy Clinic, Inc. (“clinic”). In January, 1997, the scope of respondent’s services was expanded and respondent and/or his wife was/were given check-signing authority for the clinic.

7. During the period of time from February 27, 1997 through February 10, 1998, respondent wrote 45 checks on behalf of the clinic payable to himself. The amount respondent paid himself totaled \$120,638.00. The documents provided to the Browns, however, only disclose that respondent received \$26,333.00 during that period. Accordingly, of the \$120,141.00 respondent actually received during 1997-1998, only \$26,333.00 was authorized by the Browns. Furthermore, the Browns were led to believe that respondent’s projected payments for the one-year period would total approximately \$27,000.00. The balance of the \$120,638.00 received by respondent during the one-year period, which totaled \$94,305.00 was received by respondent without the Browns’ authorization, knowledge or consent; respondent

embezzled these funds. To conceal the amount of money respondent embezzled from the clinic, respondent prepared false accounting records, which only disclosed the \$26,333.00 in payments respondent received, rather than the true amount, \$120,638.00 he actually received.

8. Not only did respondent not report checks written to himself, he also disguised checks he had written to himself by entering the name of different payees in the General Ledger, rather than his own name. For example, check number 7431, which was written to respondent in the amount of \$1,500.00, was recorded in the General Ledger as being written to Denticare in the amount of \$110.21. Check number 7726, which was written to respondent for \$2,000.00, was recorded in the General Ledger as being written to Homecomings Financial for \$1,000.00. Finally, check number 7902, which was written to respondent for 45,600.00, was recorded in the General Ledger as being written to Survival Strategies for \$1,200.00.

9. Respondent also concealed the amount of money he embezzled from the clinic by recording a lesser amount in the General Ledger than he actually received. For check number 7589, written to respondent in the amount of \$2,225.00, respondent reported in the Ledger that the check had been written in the amount of \$225.00. For check number 7590, written to respondent in the amount of \$1,750.00, respondent reported in the Ledger that the check had been written in the amount of \$750.00. And, for check number 7911, written to respondent in the amount of \$5,600.00, respondent reported in the Ledger that the check had been written in the amount of \$2,720.00.

10. On March 5, 1998, respondent and his wife met with the Browns. Respondent and his wife presented the Browns with a budget document entitled "1998 Financial Plan." This plan ostensibly represented the actual revenues and expense information for the year 1997. The plan revealed that respondent had received approximately \$27,000 for his services in 1997. Based on this information, the Browns budgeted \$27,000 for respondent's 1998 accounting services. In actuality, as set forth in preceding Factual Findings, respondent really received \$120,638.00 during 1997.

11. On or about March 31, 1998, respondent provided the Browns with a "Check Detail Report" (General Ledger) for the period July 1997 through March 1998. The Ledger showed entries for only 13 checks written to respondent totaling \$26,333.00. However, in reality, respondent had, as previously noted, received \$120,638.00 from the clinic during this time frame.

12. As a result of respondent's unprofessional and dishonest acts, the Browns did not have sufficient funds to pay their regular and normal business expenses. The clinic's bank statements show a zero balance as of April 30, 1998.

The payroll tax deposits made by respondent for the first quarter of 1998, which were due on April 30, 1998, were deficient by \$30,380.11 and the funds were not available in the clinic account to pay the deficiency.

13. Respondent's accounting duties were expanded for the clinic in January 1997 until respondent was terminated around April 30, 1998. Respondent's expanded duties made him responsible for making the bi-weekly payroll tax deposits to the clinic's bank, and for filing the quarterly and annual payroll tax returns, forms 940 and 941.

14. Respondent was consistently late in filing the tax returns and making the tax deposits. Respondent failed to timely prepare, file, deposit, and remit payroll taxes for the clinic from March 31, 1997 through April 30, 1998. As a result, the clinic was assessed, and paid, penalties totaling \$7,267.89 to the Internal Revenue Service.

15. A Form 941 was due on April 30, 1997 for the first quarter of 1997, however, respondent did not file the form until May 30, 1997. The tax due totaled \$38,801.09, but respondent only paid \$32,623.30, resulting in a \$2,769.30 penalty assessment against the Browns. Another Form 941 was due on July 31, 1997 for the second quarter of 1997, however, respondent did not file the form until November 12, 1997. The tax due totaled \$61,370.00, but respondent only paid \$49,920.90, resulting in a \$576.40 penalty assessment against the Browns. Another Form 941 was due on October 31, 1997 for the third quarter of 1997, however, respondent did not file the form until November 12, 1997. The tax due totaled \$61,370.00, but respondent only paid \$21,165.70, resulting in a \$1,649.52 penalty assessment against the Browns. Another Form 941 was due on January 31, 1998 for the fourth quarter of 1997, however, the form was not filed until August 19, 1998, after respondent was fired, resulting in a \$1,990.46 penalty assessment against the Browns. Additionally, a Form 940 was due to be filed for 1997 on January 31, 1998, however, the form was not filed until August 19, 1998, after respondent was fired, resulting in a \$456.56 penalty assessment against the Browns.

16. Respondent's CPA certificate was not valid between April 1, 1995 and June 13, 1995, and between April 1, 1997 and June 13, 1997. Nonetheless, respondent performed public accountancy and used the CPA designation during these periods of non-certification.

17. Respondent practiced public accountancy as "Thomas Kalajian, CPA, Inc." even though that corporate name was not licensed with the board.

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## COSTS

18. Complainant's cost certifications reveal the following: the costs of investigation and enforcement, including the Attorney General costs, totals \$18,803.91. Clearly, the Deputy Attorney General who prosecuted the case against respondent was extremely well prepared and did an exemplary job. She obviously spent considerable time preparing this complex matter for the hearing. Accordingly, the ALJ concludes that the total amount of \$18,803.91 represents the reasonable costs of investigation and prosecution, including attorney's fees, of the instant action against respondent.

## LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for discipline of respondent and his certificate pursuant to Business and Professions Code ("Code") section 5100, subdivision (j) because, as set forth in Findings 3, 4, 5, 6, 7, 8, and 9, respondent engaged in unprofessional conduct by embezzling and misappropriating funds from the Browns through fraudulent means and under false pretenses.

2. Cause exists for discipline of respondent and his certificate pursuant to Code section 5100, subdivision (i) because, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, and 11, respondent engaged in unprofessional conduct by knowingly preparing, publishing and disseminating false, fraudulent and materially misleading financial statements, reports and information to his clients, the Browns.

3. Cause exists for discipline of respondent and his certificate pursuant to Code section 5100, subdivision (h) because, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, respondent engaged in unprofessional conduct by engaging in fiscal dishonesty and breaching his fiduciary duties to the Browns.

4. Cause exists for discipline of respondent and his certificate pursuant to Code section 5100, subdivision (c) because, as set forth in Findings 13, 14, and 15, respondent engaged in unprofessional conduct as evidenced by his dishonesty and fraud in his practice of public accountancy in providing payroll tax services to the Browns.

5. Cause exists for discipline of respondent and his certificate pursuant to Code section 5050 because, as set forth in Finding 16, respondent engaged in the practice of public accountancy while his permit to practice public accountancy was expired.

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6. Cause exists for discipline of respondent and his certificate pursuant to Code section 5060 because, as set forth in Finding 17, respondent held himself out as corporation, under a corporate name, which was other than the name listed on respondent's permit. Accordingly, the corporation did not have a valid permit to practice public accountancy.

7. Respondent is found to have violated Code sections 5100, subdivisions (c), (i), and (j), accordingly the reasonable costs of investigation and prosecution of this matter against respondent, including attorney's fees, recoverable by the board pursuant to Code section 5107, totals \$18,803.91.

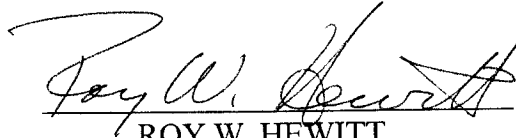
#### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's, Thomas V. Kalajian's, CPA Certificate number 22037, and all rights appurtenant thereto, are revoked.

IT IS FURTHER ORDERED that respondent shall pay the board \$18,803.91 reimbursement for the reasonable costs of investigation and enforcement of the instant action.

Dated: February 28, 2001.

  
ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

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of the State of California  
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8 BEFORE THE BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
9 STATE OF CALIFORNIA  
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11 In the Matter of the Accusation ) Case No. AC-2000-21  
Against: )  
12 )  
THOMAS V. KALAJIAN ) ACCUSATION  
13 15707 Rockfield, Suite 101 )  
Irvine, CA 92718 )  
14 )  
CPA Certificate No. 22037 )  
15 )  
Respondent. )  
16 )  
17

18 Complainant Carol B. Sigmann, as cause for disciplinary  
19 action, alleges:

20 1. Complainant is the Executive Officer of the  
21 California State Board of Accountancy ("Board") and makes and  
22 files this Accusation solely in her official capacity.

23 LICENSE HISTORY

24 2. On or about September 26, 1975, the Board issued  
25 Certified Public Accountant Certificate No. 22037 to Thomas V.  
26 Kalajian ("respondent").

27 Said certificate expired and was not valid, during the  
28 following time periods: April 1, 1989 through May 31, 1989, April

1 1, 1991 through June 24, 1991, April 1, 1995 though June 13,  
2 1995, April 1, 1997 through June 13, 1997, and April 1, 1999  
3 through October 1, 1999.

4 The certificate was renewed effective October 2, 1999  
5 and will expire on March 31, 2001 unless renewed.

6 JURISDICTION

7 3. This Accusation refers to the following statutes of  
8 the California Business and Professions Code ("Code"):

9 A. Section 118(b) provides that the expiration of a  
10 license without the written consent of the Board shall not,  
11 during any period in which it may be renewed, restored, reissued,  
12 or reinstated, deprive the Board of its authority to institute or  
13 continue a disciplinary proceeding against a licensee.

14 B. Section 5050 provides:

15 "No person shall engage in the practice of public  
16 accountancy in this State unless such person is the holder  
17 of a valid permit to practice public accountancy issued by  
18 the Board; ..."

19 C. Section 5051 provides in pertinent part that a  
20 person is deemed to be engaging in the practice of public  
21 accountancy who renders professional services generally to  
22 clients for compensation in any or all matters relating to  
23 accounting procedure and to the recording, presentation, or  
24 certification of financial information or data (subd.(e)),  
25 prepares statements as a part of bookkeeping operations for  
26 clients (subd.(f)), prepares or signs as a tax preparer, tax  
27 returns for clients (subd.(g)), prepares personal financial or  
28 investment plans or provides to clients products or services of

1 others in implementation of personal financial or investment  
2 plans (subd.(h)), or provides management consulting services to  
3 clients (subd.(i)).

4 D. Section 5060 provides, in part, as follows:

5 ". . .

6 "(b) No person or firm may practice public accountancy  
7 under any name other than the name under which the person or  
8 firm holds a valid permit to practice issued by the Board.

9 "..."

10 E. Section 5100 provides that the Board may revoke,  
11 suspend or refuse to renew the permit or certificate of any  
12 licensee for unprofessional conduct, which conduct includes:

13 "(c) Dishonesty, fraud, or gross negligence in  
14 the practice of public accountancy or in the  
15 performance of the bookkeeping operations described in  
16 Section 5052.

17 " . . .

18 (h) Fiscal dishonesty or breach of fiduciary  
19 responsibility of any kind.

20 (i) Knowing preparation, publication or dissemination  
21 of false, fraudulent, or materially misleading financial  
22 statements, reports, or information.

23 (j) Embezzlement, theft, misappropriation of funds or  
24 property, or obtaining money, property, or other valuable  
25 consideration by fraudulent means or false pretenses."

26 F. Section 5107 provides for the recovery by the Board  
27 of its reasonable costs of investigation and prosecution,  
28 including attorney's fees if respondent is found to have

1 violated, Code section 5100 (b), (c), (i) or (j).

2  
3 CHARGES AND ALLEGATIONS

4 4. Respondent has subjected his license to discipline  
5 pursuant to Code section 5100(j) for unprofessional conduct by  
6 his embezzlement, theft or misappropriation of funds by  
7 fraudulent means or false pretenses from Joan and Harvey B. based  
8 upon the facts which follow.

9 5. In or about June, 1995, respondent was retained by  
10 Joan and Harvey B. (hereinafter "Mr. and Mrs. B."), for their  
11 business, a clinic, (hereinafter the "Clinic") to perform  
12 bookkeeping and tax services for the Clinic on an ongoing basis.  
13 In or about January, 1997, the scope of the engagement was  
14 expanded such that respondent was given check-signing authority  
15 for the business account of the Clinic.

16 6. In connection with respondent's check signing  
17 authority on behalf of the Clinic, during the period of 2/27/97 -  
18 2/10/98, respondent wrote 35 checks from the Clinic business  
19 account payable to himself which totaled \$97,503.00 without  
20 having authorization from Mr. and Mrs. B. and without informing  
21 Mr. and Mrs. B. Prior to respondent's writing of these checks  
22 payable to himself, he had provided to Mr. and Mrs. B. a written  
23 budgetary analysis which showed that the fees for accounting  
24 services during this same time period were projected to be  
25 \$27,000.00. In addition, to conceal the amount of money  
26 respondent had paid himself from the Clinic's account, respondent  
27 prepared accounting records which showed disbursements to  
28 respondent in the amount of \$26,333.00 during this time period,

1 rather than the true amount of \$97,503.00.

2           7. In addition to not reporting checks written to  
3 himself, respondent disguised some checks he had written to  
4 himself by entering the name of a different payee in the general  
5 ledger rather than his own name. For check #7431 which was  
6 written to respondent for \$1,500.00, respondent reported in the  
7 ledger that it had been written to Denticare in the amount of  
8 \$110.21. For check #7726 which was written to respondent for  
9 \$2,000.00, respondent reported in the ledger that it had been  
10 written to Airtouch for \$39.03. For check #7773 written to  
11 respondent for \$2,000.00, respondent reported in the ledger that  
12 it had been written to Homecomings Financial for \$1,000.00. For  
13 check #7902 written to respondent for \$5,600.00, respondent  
14 reported in the ledger that it had been written to Survival  
15 Strategies for \$1,200.00

16           8. Respondent also concealed the amount of money he  
17 took from the Clinic account by reporting in the general ledger  
18 an amount smaller than the actual amount of checks written to  
19 him. For check #7589 written to respondent in the amount of  
20 \$2,225.00, respondent reported in the ledger that the check had  
21 been written for the amount of \$225.00. For check #7590 written  
22 to respondent in the amount of \$1,750.00, respondent reported in  
23 the general ledger that the check had been written for the amount  
24 of \$750.00. For check #7911 written to respondent in the amount  
25 of \$5,600.00, respondent reported in the general ledger that the  
26 check had been written for the amount of \$2,720.00.

27           9. Respondent has subjected his license to discipline  
28 pursuant to Code section 5100(i) for unprofessional conduct by

1 his knowing preparation, publication and dissemination of false,  
2 fraudulent or materially misleading financial statements,  
3 reports, or information to Mr. and Mrs. B. based upon the facts  
4 which follow.

5           10. On March 5, 1998, respondent met with Mr. and Mrs.  
6 B. and presented a budget document titled "1998 Financial Plan."  
7 This Plan contained the actual revenue and expenses information  
8 for the year 1997. The Plan showed that respondent had been paid  
9 a total of \$27,000.00 for 1997. In actuality, respondent had  
10 written checks payable to himself in an amount in excess of  
11 \$90,000.00 during that period.

12           11. On or about March 31, 1998, respondent provided  
13 Mr. and Mrs. B. with a Check Detail Report (general ledger) for  
14 the period July 1997 through March 1998. The ledger showed  
15 entries for only 13 checks written to respondent which totaled  
16 \$26,333.00. However, as of March 31, 1998, respondent had  
17 written a total of 35 checks payable to himself from the Clinic  
18 business account which totaled \$97,503.00.

19           12. Respondent also attempted to conceal the amount of  
20 money he was taking from the Clinic account by recording false  
21 information in the general ledger as was described in paragraphs  
22 7 and 8, above.

23           13. Respondent has subjected his license to  
24 discipline pursuant to Code section 5100(h) for unprofessional  
25 conduct by his fiscal dishonesty and breach of fiduciary  
26 responsibility to Mr. and Mrs. B. based upon the facts which  
27 follow.

28           14. As a result of respondent's taking of funds from

1 the Clinic account described above, Mr. and Mrs. B. did not have  
2 sufficient funds in the Clinic account to pay their regular and  
3 necessary business expenses. The Clinic's bank account  
4 statements show a zero balance as of April 30, 1998. The payroll  
5 tax deposits made by respondent for the first quarter of 1998  
6 which were due on April 30, 1998 were deficient by \$30,380.11 and  
7 the funds were not available in the Clinic account to pay the  
8 deficiency.

9 15. Respondent has subjected his license to discipline  
10 pursuant to Code section 5100(c) for unprofessional conduct by  
11 his dishonesty, fraud or gross negligence in the practice of  
12 public accountancy in providing payroll tax services to Mr. and  
13 Mrs. B. based upon the facts which follow.

14 16. When the accounting duties of respondent were  
15 expanded for the Clinic in January, 1997 until the time he was  
16 terminated on or around April 30, 1998, respondent was  
17 responsible for making the bi-weekly payroll tax deposits to the  
18 Clinic's bank and the preparation and filing of the quarterly and  
19 annual payroll tax returns, forms 940 and 941.

20 17. Respondent's preparation and filing of these tax  
21 returns and making the tax deposits was consistently late.  
22 Respondent failed to timely prepare, file, deposit and remit  
23 payroll taxes for the Clinic for the period March 31, 1997  
24 through April 30, 1998. As a result, the Clinic was assessed and  
25 was required to pay penalties totaling \$7,267.89 to the Internal  
26 Revenue Service.

27 18. Form 941 was due on 4/30/97 for the first quarter  
28 of 1997, but was not filed by respondent until 5/30/97. The tax



1 due was \$38,801.09, but respondent paid only \$32,623.30, which  
2 resulted in a penalty to Mr. and Mrs. B. of \$2,769.30. Form 941  
3 was due on 7/31/97 for the second quarter of 1997, but was not  
4 filed by respondent until 11/12/97. The tax due was \$61,370.00,  
5 but respondent paid only \$49,920.90, which resulted in a penalty  
6 to Mr. and Mrs. B. of \$576.40. Form 941 was due on 10/31/97 for  
7 the third quarter of 1997, but was not filed by respondent until  
8 11/12/97. The tax due was \$61,370.00, but respondent paid only  
9 \$21,165.70, which resulted in a penalty to Mr. and Mrs. B. of  
10 \$1,649.52. Form 941 was due on 1/31/98 for the 4<sup>th</sup> quarter of  
11 1997, but was not filed until 8/19/98, after respondent had been  
12 discharged from his duties. A penalty of \$1,990.46 was assessed  
13 to Mr. and Mrs. B.. Form 940 was due on 1/31/98 for 1997, but  
14 had not been filed by respondent by the time he was discharged on  
15 4/30/98. It was eventually filed on 8/19/98 and Mr. and Mrs. B.  
16 were assessed a penalty of \$456.56.

17           19. Respondent's license is subject to discipline  
18 pursuant to Code section 5050 in that between April 1, 1995 and  
19 June 13, 1995 and between April 1, 1997 and June 13, 1997,  
20 respondent did not have a valid permit, but he practiced public  
21 accountancy. Respondent held himself out to his clients, Mr. and  
22 Mrs. B., as being capable of providing accounting services to  
23 their Clinic. Respondent was engaged by Mr. and Mrs. B. in or  
24 about June, 1995 to provide the bookkeeping and accounting  
25 services for Clinic and he prepared many financial documents for  
26 Mr. and Mrs. B. during this period, signing his work using the  
27 "CPA" designation. Respondent provided many documents to Mr. and  
28 Mrs. B. using a letterhead titled "Thomas Kalajian, CPA."

20. Respondent's license is further subject to discipline pursuant to Code section 5060 in that respondent held himself out to the public as an Accountancy Corporation without a valid permit and without obtaining approval from the Board to use the corporate name. Respondent practiced public accountancy as "Thomas Kalajian, CPA, Inc." while he was providing accountancy services to Mr. and Mrs. B. Among the services provided to Mr. and Mrs. B., respondent provided a Report on Compiled Financial Statements for the Clinic dated April 20, 1998 on letterhead which read, "Thomas Kalajian, CPA, Inc." As of April 20, 1998 and thereafter to date, respondent did not have that entity licensed with the Board and the entity had not been approved by the Board.

PRAYER

16 WHEREFORE, complainant requests that a hearing be held  
17 on the matters herein alleged, and that following said hearing,  
18 the Board issue a decision:

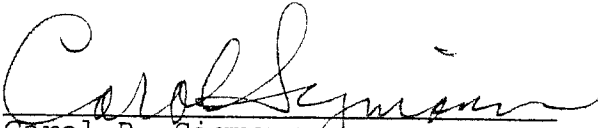
- 19 1. Revoking, suspending or otherwise imposing  
20 discipline upon Certified Public Accountant  
21 Certificate Number 22037 issued to Thomas V.  
22 Kalajian;
- 23 2. Awarding costs as provided by statute; and
- 24 3. Taking such other and further action as the Board  
25 deems proper.

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2 DATED: February 3, 2000.  
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6 Carol B. Sigmann  
7 Executive Officer  
8 Board of Accountancy  
9 Department of Consumer Affairs  
10 State of California

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28 Complainant

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